

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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SECURITIES AND EXCHANGE COMMISSION,)
Plaintiff,)
v.) Case No. C 11-00136 WHA
CHARLES SCHWAB INVESTMENT MANAGEMENT,)
CHARLES SCHWAB & CO., INC., and)
SCHWAB INVESTMENTS)
Defendants.)
-----x

**MOTION TO DISBURSE FUNDS TO PAY ESTIMATED
TAX LIABILITY FOR THE THIRD QUARTER OF 2011**

The Securities and Exchange Commission respectfully requests that the Court enter an Order for the Clerk of the Court to disburse funds on deposit with the registry of the Court to pay certain tax obligations in this case.

By consent of the defendants and stipulation of the parties, the Court entered a Final Judgment against defendants Charles Schwab Investment Management (“CSIM”), Charles Schwab & Co., Inc. (“CS&Co.”), and Schwab Investments on February 16, 2011. Pursuant to the Final Judgment, CSIM and CS&Co. have paid a total of \$110 million to the Clerk of this Court (the “Distribution Fund”). These payments include \$57,327,149 in penalties, \$34,672,851 in disgorgement and prejudgment interest, and an additional payment of \$18 million. The additional payment represented settlement of a related proceeding brought by the Financial Industry Regulatory Authority (“FINRA”), and in which FINRA consented to payment of the settlement amount into the Distribution Fund. The Distribution

Fund was thereafter deposited in an interest bearing account, account number 11-cv-00136, under the case name designation “*SEC v. Charles Schwab Investment Management, et al.*” and constitutes a Qualified Settlement Fund (QSF) under section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

By order dated March 8, 2011, the Court entered an order appointing Damasco & Associates to fulfill the tax obligations of the Distribution Fund. Pursuant to that Order, the Tax Administrator is required to pay taxes in a manner consistent with treatment of the Distribution Fund as a QSF.

The Tax Administrator has determined that the Distribution Fund owes \$600 in estimated tax liability for the third quarter of 2011. This tax payment is due September 15, 2011. *See* Declaration of Jude P. Damasco in Support of Request to Make Tax Payment attached as Exhibit 1.

The Declaration has been reviewed by the undersigned Commission counsel who has no objections.

WHEREFORE, for all the foregoing reasons, the Commission respectfully requests that this Court enter the attached proposed Order and grant such other relief as it deems just and proper.

Dated: September 1, 2011

Respectfully submitted,

/s/ Nichola L. Timmons

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**[PROPOSED] ORDER TO DISBURSE FUNDS TO PAY ESTIMATED
TAX LIABILITY FOR THE THIRD QUARTER OF 2011**

The Court, having reviewed the Securities and Exchange Commission's Motion to Disburse Funds to Pay Estimated Tax Liability for the Third Quarter of 2011, and the supporting Declaration of Jude P. Damasco in Support of Request to Make Tax Payment (the "Declaration"), and for good cause shown,

IT IS HEREBY ORDERED:

1. The Clerk of the Court shall issue a check on CRIS account number 11-cv-00136 under the case name designation "SEC v. *Charles Schwab Investment Management, et al.*," for the amount of \$600 payable to "Damasco & Associates, Trust Account", for the payment of the estimated tax liability for the third quarter of 2011, as provided in the Declaration. The check shall contain the notation "SEC v. Charles Schwab Investment Management, et al., case number 11-cv-00136 (WHA), FEIN XX-XXX4010, Tax Liability 3Q 2011."

2. The Clerk shall send the check by overnight mail to:

Damasco & Associates
700 Monte Vista Lane
Half Moon Bay, CA 94019
Phone: 650-726-4100

The Commission's counsel shall provide the Court Registry with the necessary overnight shipping information and the SEC's billing number.

Dated: _____

United States District Judge